

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

JESSE PIERCE and MICHAEL PIERCE,)	
on behalf of themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.: 3:13-cv-00641-PLR-CCS
)	
WYNDHAM VACATION RESORTS,)	
INC., and WYNDHAM VACATION)	
OWNERSHIP, INC.,)	
)	
Defendants.)	

DECLARATION OF KYLE SMITH

I, Kyle Smith, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over the age of 18 and have personal knowledge of the matters set forth herein.
2. I have been employed with Wyndham for over 22 years. I am currently the Director of Sales of In-House Operations for Wyndham Branson. I have previously served as Vice-President of Site Sales & Marketing for Wyndham's Smoky Mountains Operation. As such, I have knowledge of Wyndham's policies and practices in terms of sales practices and time keeping for non-exempt employees throughout Tennessee.
3. Wyndham's Tennessee operations span four Wyndham properties. The "Smoky Mountains Region" which includes two properties in Sevierville—Wyndham Smoky Mountains (aka "The Crossing") and Wyndham Vacation Resort Great Smoky Mountain Lodge ("The Lodge"). The Wyndham Nashville ("Nashville") and the Wyndham Resort at Fairfield Glade

("The Glade") comprise the other Tennessee region. In-House, Front-Line and Discovery Representatives are located at each Tennessee resort.

4. Wyndham sells vacation packages to its customers. These packages are sold in the form of vacation points by In-House and Frontline Reps, while others are sold in the form of trial vacation packages by Discovery (Disco) Reps. Points are used to obtain stays at numerous Wyndham properties and give the customer much more than just a place to stay but also access to other travel related services.

5. Wyndham's vacation products are available to the general public. At Wyndham's sales centers, any customer that meets our qualifications may walk in, sign up for a tour, learn about Wyndham's products, and then purchase a vacation package.

6. Purchasers of Wyndham's products do not purchase a partial interest in a specific condominium unit. Rather, purchasers acquire a level of points, which they can then use to make travel arrangements among many of the resort accommodations offered by Wyndham. The points purchased by any individual consumer represents a small quantity of the total number of points available. The points purchased are renewed annually for life and may be spent for periods of stay at numerous Wyndham properties. In no way are purchasers limited to a particular unit or resort. In fact, the points may be used to stay at numerous resorts operated by Wyndham. If points are not used during a particular year, they can be banked for use in future years subject to some limitations. Purchasers also have the ability to place points they do not intend to use in a particular year in a points credit pool for use in future years. Wyndham's points program offers a large selection of options for destinations and provides flexibility in terms of time and location of travel. Additionally, customers may use points to obtain stays at multiple non-Wyndham properties through the Wyndham Club Pass program.

7. Although the points purchased by customers are transferrable by sale, gift, inheritance, or through a marital dissolution, other features of the Wyndham program are not transferrable. For example, purchasers may obtain "Perks by Club Wyndham" which provides travel-related benefits and privileges to its members. This program allows customers to obtain discounts from more than 240,000 merchants including retail stores and golf courses. Such membership in "perks by Club Wyndham" is nontransferable and cannot be resold.

8. Wyndham customers may also participate in the "Plus Partners" program. With this program points purchased by customers may be used for stays in hotels worldwide. Points may also be used to purchase airline tickets with major airlines such as Delta, American Airlines, US Airways, and British Airways. Points may be used to rent automobiles from car rental companies such as Avis and Budget. Points can also be applied to purchase cruise tickets with cruise lines such as Carnival, Royal Caribbean, Norwegian Cruise Line, Holland America, Viking River Cruises, or Princess Cruises. Points may also be used to purchase tickets to amusement parks such as Walt Disney World, Universal Orlando, or Sea World.

9. Wyndham hopes to make its customers lifetime owners of its vacation products and markets its products accordingly. Wyndham does not sell points packages to the buyer with the expectation that they will be resold and, in my experience, any such resale is rare. Purchasers of our products are the end users of those products. They purchase points for recreational use, not for financial profit. Moreover, the vacation packages sold by Discovery Representatives cannot be resold.

Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the foregoing is a true and correct statement derived from my personal knowledge and a review of the authenticated business records. I further attest that all of the documents attached hereto are authentic, true and accurate copies of business records maintained by Wyndham.

Executed this 4 day of May, 2017.



KYLE SMITH

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